

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**SECOND AMENDMENT ARMS,
R. JOSEPH FRANZESE, individually
and d/b/a SECOND AMENDMENT
ARMS, and TONY KOLE,**

Plaintiffs,

v.

**CITY OF CHICAGO,
LORI LIGHTFOOT,
EDDIE JOHNSON,
and ANNA VALENCIA,**

Defendants.

Case No. 10 C 4257

Judge Robert M. Dow, Jr.

**DEFENDANTS' LOCAL RULE 56.1(a)(3)
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Defendants City of Chicago (the "City"), Mayor Lori Lightfoot, Superintendent of Police Eddie Johnson, and City Clerk Anna Valencia (collectively, "Defendants"), by their attorney, Mark A. Flessner, Corporation Counsel for the City of Chicago, herby submit their Local Rule 56.1(a)(3) statement of material facts as to which there are no genuine issues of dispute and which entitle Defendants to judgment on the remaining counts of Plaintiffs' Fourth Amended Complaint ("Compl."), Dkt. 146, as a matter of law.

I. Parties

1. Plaintiff R. Joseph Franzese [REDACTED]

[REDACTED]. Deposition of R. Joseph Franzese ("Franzese Dep.") (attached hereto as Ex. A) 6:13–19.

2. Plaintiff Second Amendment Arms ("SAA") is Franzese's "doing business as" company. Compl. ¶ 2. SAA operated from approximately 2008 or 2009 until sometime in 2011,

2012, or 2013, first in unincorporated Deerfield, Illinois, and then, in Lake Villa, Illinois.

Plaintiffs' Answers to Defendants' Third Set of Interrogatories to Plaintiffs ("Pls.' Resp. to Interrog.") (attached hereto as Ex. B) No. 4; Franzese Dep. 16:10–18, 17:10–18:7, 62:13–20.

3. Plaintiff Tony Kole is a resident of Arlington Heights, Illinois. Deposition of Tony Kole ("Kole Dep.") (attached hereto as Ex. C) 4:10–13.

4. Defendant City is a municipal entity organized under the Constitution and laws of the State of Illinois. Compl. ¶ 5; Defendants' Answer to Plaintiffs' Fourth Amended Complaint ("Defs.' Answer"), Dkt. 190 ¶ 5.

5. The other Defendants are City officials purportedly sued in their official capacities. Defendant Lori Lightfoot is the City's Mayor. Mayor Lightfoot replaced former Mayor Rahm Emanuel, who was named as a defendant in his official capacity. Compl. ¶ 6. Defendant Eddie Johnson is the City's Superintendent of the Chicago Police Department. Superintendent Johnson replaced former Superintendent Garry McCarthy, who was named as a defendant in his official capacity. *Id.* ¶ 7. Defendant Anna Valencia is the Clerk of the City of Chicago. Clerk Valencia replaced former Clerk Susana Mendoza, who was named as a defendant in her official capacity. *Id.* ¶ 8.

II. Jurisdiction and Venue

6. Plaintiffs raise claims under the Second Amendment of the United States Constitution, and accordingly, this Court has subject-matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983.

7. The City of Chicago is located within the Northern District of Illinois of the United States District Court, and accordingly, venue is proper under 28 U.S.C. § 1391.

III. Undisputed Material Facts

Second Amendment Arms

8. On July 2, 2010, the City Council enacted an ordinance (the “2010 Ordinance”) that, among other things, prohibited the sale or transfer of firearms within the City of Chicago, effective on July 12, 2010. *See* July 2, 2010 Journal of the Proceedings of the City Council (attached hereto as Ex. D) at 96235, 96265.

9. On June 25, 2014, the City Council repealed the 2010 Ordinance and enacted a new ordinance (the “2014 Ordinance”), effective immediately upon enactment, that permits the sale of firearms subject to certain restrictions. *See* June 25, 2014 Journal of the Proceedings of the City Council (attached hereto as Ex. E) at 83727, 83760.

10. On July 2, 2010, Franzese submitted an application for SAA to sell firearms at 415 West Armitage Avenue, Floor 1, Chicago, Illinois 60614. The zoning classification for that property address did not and does not permit business or retail uses, either as of right or as a special use. *See* Dkt. 204-2 ¶¶ 10–12; Dkt. 215-10 ¶¶ 10–12. Franzese has not submitted any subsequent applications for business licenses to operate a gun store within the City of Chicago. Franzese Dep. 36:16–37:10.

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Franzese Dep. 103:8–104:8, 104:19–21, 105:3–7. [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 102:6–10.

12. [REDACTED]. Franzese Dep. 222:21.

13.

[REDACTED]. Pls.' Resp. to Interrog. No. 4; Franzese Dep. 15:23–16:1, 16:10–14, 18:20–19:1. [REDACTED]

[REDACTED]. Franzese Dep. 16:15–18, 17:10–14, 31:19–32:12, 33:4–21. [REDACTED]

[REDACTED]. *Id.* at 34:13–15. [REDACTED]

[REDACTED]. *Id.* 17:10–18:7, 62:13–20; Pls.' Resp. to Interrog. No. 4.

14.

[REDACTED]. Franzese Dep. 58:21. [REDACTED]. *Id.* at 36:10–12.

[REDACTED]. *Id.* at 52:10–53:1. [REDACTED]

[REDACTED]. *Id.* at 155:22–157:12. [REDACTED]

[REDACTED]. *Id.* at 33:4–11.

15.

[REDACTED]. Franzese Dep. 21:23–22:1, 49:18–20. [REDACTED]

[REDACTED]. *Id.* at 25:7–12; 26:4–9. [REDACTED]

[REDACTED]. *Id.* at 49:14–17. [REDACTED]

[REDACTED]. *Id.* at 26:10–13.

16. The SAA tax returns Plaintiffs produced in this lawsuit were for the years 2011

and 2010 and the months of November and December of 2009. SAA Tax Returns (attached hereto as Ex. F); Franzese Dep. 218:10–24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. SAA Tax Returns; Franzese Dep. 219:12–20, 221:5–222:3.

17. [REDACTED]

[REDACTED]. Franzese Dep. 10:23–11:6.

18. [REDACTED]

[REDACTED]. See SAA Business Plan (attached hereto as Ex. G); Franzese Dep. 115:23–116:5. [REDACTED]

[REDACTED]

[REDACTED]. SAA Business Plan at 3. [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]. *Id.* at 4. [REDACTED]

[REDACTED]

[REDACTED]

Id. at 5.

19. [REDACTED]

[REDACTED]

[REDACTED].”

SAA Business Plan at 2.

20. [REDACTED]

[REDACTED]. Franzese Dep. 140:19–141:3. [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 141:4–10. [REDACTED]

[REDACTED] *id.* at 141:11–15, [REDACTED]

[REDACTED], *id.* at 141:18–21, [REDACTED]

[REDACTED] *id.* at 212:14–18.

21. [REDACTED]

[REDACTED]. *Id.* 100:8–20. [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 147:2–148:1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 146:5–18.

22. [REDACTED]

[REDACTED]

[REDACTED] Franzese Dep. 74:11–24.

23. [REDACTED]

[REDACTED]

[REDACTED] Franzese Dep. 38:7–9. [REDACTED]

[REDACTED] *Id.* at 59:23–60:11.

24. [REDACTED]

[REDACTED] Deposition of Joseph LaJoy (“LaJoy Dep.”) (attached hereto as Ex. H) 23:20–24); Deposition of Roman Tapkowski (“Tapkowski Dep.”) (attached hereto as Ex. I)

88:5–14. [REDACTED]
[REDACTED]. LaJoy Dep. 12:14–13:22. [REDACTED]
[REDACTED] *id.* at 24:9–13, [REDACTED]
[REDACTED]
[REDACTED] *id.* at 26:13–27:4. [REDACTED]
[REDACTED], *id.* at 16:21–17:1, 17:7–8. [REDACTED]
[REDACTED],” *id.* at 17:9-10, 92:11-18.

25. [REDACTED],
Tapkowski Dep. 47:16–19, [REDACTED]
[REDACTED]. *Id.*
at 48:11–18, 49:10–15. [REDACTED]
[REDACTED]. *Id.* at 54:19–23.

26. Over the course of this lawsuit, Plaintiffs have claimed varying amounts of profits that SAA would have earned from the period between 2010 and 2015. [REDACTED]
[REDACTED]
[REDACTED]. Franzese Dep. 45:3–6.
In response to an interrogatory, Plaintiffs projected that SAA would earn \$20,000 to \$30,000 per week in gross revenues for the first six months of business in 2010, \$40,000 per week in gross revenues for the following six months, and over \$29 million in total gross revenues through the end of 2015. Pls.’ Resp. to Interrog. No. 6. [REDACTED]
[REDACTED]
[REDACTED] Expert Report of Miles Hall (attached hereto as Ex. J) at 3. [REDACTED]
[REDACTED]

[REDACTED]. Expert Report of Robert Southwick (attached hereto as Ex. K) at 10, 14.

Laser Sights

27. Tony Kole is interested in purchasing and possessing laser-sight accessories within the City of Chicago. Kole Dep. 9:8–24.

28. The *Chicago Tribune* reported on January 11, 1999 that Chicago Police Officer John C. Knight was shot and killed by a gang member who used a handgun equipped with a laser scope. See John Chase, “Man Charged with Murder in Cop’s Death,” *Chicago Tribune*, Jan. 11, 1999, available at <http://www.chicagotribune.com/news/ct-xpm-1999-01-11-9901130074-story.html> (attached hereto as Ex. L) at 1.¹

29. On March 10, 1999, the City Council passed an ordinance prohibiting the sale, purchase, and possession of “laser sight accessories,” which the ordinance defined as “laser sighting device[s] which [are] either integrated into a firearm or capable of being attached to a firearm.” March 10, 1999 Journal of the Proceedings of the City Council (“Laser Sight Ordinance”) (attached hereto as Ex. M) at 91067–91068, 91071.

30. The Laser Sight Ordinance contained the following finding: “WHEREAS, The City of Chicago finds that the public health and safety of its citizens, most particularly its police officers, are being endangered by the use of laser sights[.]” Laser Sight Ordinance at 91067.

31. On April 8, 1996, the *Chicago Tribune* reported that Chicago-area gangs were going “high tech” by using laser-sight accessories on firearms. Lori Lessner, “Gangs Go High Tech by Using Laser Gun Sights,” *Chicago Tribune*, Apr. 8, 1996, available at <http://www.chicagotribune.com/news/ct-xpm-1996-04-08-9604080181-story.html> (attached

¹ The Court may take judicial notice of the newspaper articles Defendants cite. See, e.g., *Specht v. Google Inc.*, 758 F. Supp. 2d 570, 586 (N.D. Ill. 2010), judgment entered, No. 09 C 2572, 2011 WL 4737179 (N.D. Ill. Oct. 6, 2011), and *aff’d*, 747 F.3d 929 (7th Cir. 2014).

hereto as Ex. N) at 1. The article reported that laser sights were “one of the latest additions to the criminal arsenal,” and that a laser sight “attaches to a gun and can turn a novice into a marksman.” *Id.*

32. A firearm may be sold with a laser sight already integrated, or a laser sight may be attached to a firearm by means, for example, of a firearm’s “accessory rail.” Kole Dep. 14:8–11. [REDACTED]

[REDACTED]. Tapkowski Dep. 65:9–66:4.

33. All standard firearms have iron sights. Kole Dep. 26:13–16. [REDACTED]
[REDACTED]. Franzese Dep. 232:11–19. Kole explained that a laser sight is “an accessory. So it’s not a fundamental part of the design of the firearm and that fundamental design is the iron sights.” Kole Dep. 32:6–10. If his laser were to fail, Kole says he would “have something to revert to.” *Id.* at 32:10–12. If the laser sight on his firearm were broken, Kole says he would “absolutely” still be able to defend himself if necessary. *Id.* at 31:3–8.

34. [REDACTED]
[REDACTED] Tapkowski Dep. 6:2–3; 10:18–13:2. [REDACTED]
[REDACTED] *id.* at 68:24–69:2, [REDACTED]
[REDACTED],
Id. at 69:2–9.

35. Since the enactment of the Laser Sight Ordinance in 1999, multiple news articles concerning mass-shooting tragedies—including the recent 2019 shooting in Aurora, Illinois, the 2018 shooting during a video game tournament in Jacksonville, and the 2009 Fort Hood shooting—have reported that the shooters used firearms equipped with laser sights to carry out

their attacks. *See* Chuck Goudie & Christine Tressel, “Aurora Shooter Gary Martin Ignored Gun Card Revocation,” *ABC 7 Chicago*, Feb. 18., 2019, available at <https://abc7chicago.com/aurora-shooter-gary-martin-ignored-gun-card-revocation-/5144404/> (attached hereto as Ex. O) at 3; Marco della Cava & Kevin Johnson, “Jacksonville Killer Stalked Victims with 2 Handguns, Laser Sight,” *USA Today*, Aug. 27, 2018, available at <https://www.usatoday.com/story/news/2018/08/27/jacksonville-killer-stalked-victims-2-handguns-laser-sight/1113893002/> (attached hereto as Ex. P) at 1; Brian Todd, “Attorney: Court Hearing for Fort Hood Suspect to be Held in Hospital,” *CNN*, Nov. 20, 2009, available at www.cnn.com/2009/CRIME/11/20/fort.hood.hearing/index.html# (attached hereto as Ex. Q) at 1.

36. On October 23, 2018, the *Chicago Tribune* reported that two individuals were shot—and one of them, a two-year-old boy, was killed—by a gang member firing a gun equipped with a laser sight. Megan Crepeau, “Prosecutor: 2-Year-Old Boy Killed After Gang Leader Gives Order to Shoot: ‘Bust, Bust, Bust’,” *Chicago Tribune*, Oct. 23, 2018, available at <http://www.chicagotribune.com/news/breaking/ct-met-arrest-boy-killed-20181022-story.html> (attached hereto as Ex. R) at 1–2, 4.

Date: July 12, 2019

Respectfully submitted,

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